

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ALABAMA  
SOUTHERN DIVISION

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U.S. DISTRICT COURT  
N.D. OF ALABAMA

UNITED STATES OF AMERICA )

vs. )

ERIC ROBERT RUDOLPH )

Case No. CR-00-S-422-S

**MOTION TO REVIEW EX PARTE FILINGS**

Comes Now the United States of America, by and through its counsel, Alice H. Martin, United States Attorney for the Northern District of Alabama, Michael W. Whisonant, Robert J. McLean, and William R. Chambers, Assistant United States Attorneys, and moves this Honorable Court to review the ex parte filings by the defendant in the above styled matter and restrict further ex parte filings by the defendant unless the United States is given an opportunity to be heard on each proposed filing and in support of said motion says as follows:

1. The Criminal Docket sheet for this case reflects that as of Friday, June 11, 2004 there have been 239 filings. Of those 239 filings, 95 were filed by the defendant. Excluding 6 CJA forms which were filed leaves 89 filings by the defendant. Of those 89 filings 58 were filed ex parte. That means 65% of the filings by the defendant in this case have been made without the government's knowledge and opportunity to respond.

2. The purpose of this motion is not to seek information about any filings which

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pertain to the administrative aspects of this case, such as CJA forms. However, the number of ex parte filings in this case is extraordinary. So many filings have occurred that the United States is concerned about information which may have been presented to the Court which is un rebutted and unknown to the United States.

3. On May 19, 2004 the Court entered Discovery Order No. 1 (Doc. 225) wherein a ex parte submission (Doc. 182) of the defendant was unsealed as to the United States. In that filing the defense alleges the United States failed to turn over Brady material. The defendant made no specific request to the United States regarding this issue and the undersigned Assistant United States Attorney was unaware of the issue. The United States has been extremely forthcoming with discovery in this case and now we find that the defense has been discussing a potentially serious matter with the Court ex parte, leaving the United States to be caught unawares should that issue arise.

4. It appears that some of the ex parte filings dealt with the issuance of Fed. R. Crim.

P. Rule 17(c) subpoenas for documents and records. Rule 17 (c)(1) states in part:

The Court may direct the witness to produce the designated items in court before the trial or before they are to be offered into evidence. When the items arrive, the court may permit the parties and their attorneys to inspect all or part of them.

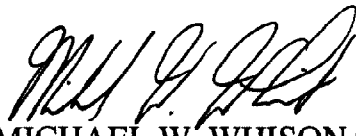
The undersigned Assistant United States Attorney has seen 3 such subpoenas issued to the BATF. On the face of those subpoenas there is a statement that the subpoenas can be complied with by furnishing the requested documents and records to defense counsel on a date well in advance of trial or the time when they would be offered in evidence. If that is

the case with other Rule 17 subpoenas the United States would like to exercise its right under Rule 17 to examine the documents and records when the defense receives them.

5. The United States respectfully requests that the Court conduct a review of all the ex parte filings by the defense in this case and release to the United States any ex parte filings which deal with non-administrative matters. Further, the United States moves this Honorable Court to review future ex parte filings of the defendant and give the United States an opportunity to respond to any filings that do not relate to administrative matters.

Respectfully submitted this 18<sup>th</sup> day of June, 2004.

ALICE H. MARTIN  
United States Attorney



MICHAEL W. WHISONANT  
Assistant United States Attorney

**CERTIFICATE OF SERVICE**

This is to certify that a copy of the foregoing has been served on the defendant by mailing a copy of same this the 18<sup>th</sup> day of June, 2004, by First Class, United States mail, postage prepaid, to his attorneys of record:

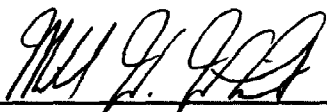
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